

The Bully Offer



By Brian Madigan LL.B.

This is an offer which includes a short irrevocable date, in a delayed offer presentation format. As listing agents do their best to encourage multiple offers, buyer's agents are reacting by trying to level the playing field.

In one case, a property was listed at a price below the price that the present owners had paid when they purchased the property 3 year's previously. And, they had done substantial renovations. So, rather than pick the right listing price, they chose a price so low that multiple offers would be inevitable.

Naturally, the agent said "no offers until Saturday". But, along came an offer anyway, and it said that it had to be accepted "by Friday". It was a very good offer at a very good price. Legally, the agent is under an obligation to present all offers to the principal. They can be encouraged to re-submit, but if the purchaser doesn't agree, the offer has to be submitted prior to its expiration on Friday.

The offer was a good one, and the seller accepted it. The buyer with the "bully offer" was happy, but what about everyone else? Is this legal, is it ethical, is it moral?

Obviously, it makes a sham of the system. The Saturday prospective purchasers were all disappointed, but they had participated in a process which drove the price up for the vendor. The owner was clearly permitted to sell to whomever he chose, and whenever he chose. The agent was under a legal obligation to present the bully offer. So, what can be done?

The aggrieved Saturday purchasers might consider suing! Yes, they could sue for damages and the measure of damages would be up to the Court. This is not unlike tender situations eliciting competitive bids in the construction industry. An owner may be liable in damages for failing to adhere to the tender system. It was this tender system in the first place which allowed the vendor to secure competitive bids. The Supreme Court of Canada has made the owner liable to aggrieved tenderers where their bids have not been accepted, yet they have complied with the tender rules.

So the term "bully offer" is somewhat pejorative. The purchaser has done nothing wrong, the purchaser's agent has done nothing wrong and yet this short

irrevocable offer is referred to as a “bully offer”. By the same token, the people at risk of complaint and potential lawsuits are the owner and the owner’s agent. They are the ones who have failed to honour their obligations. Sometimes, greed gets the best of people.

All in all, this multiple offer process needs some attention and revamping in order to restore the confidence of the consumer in the system.

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